IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 8450 of 1996

Between:

S. Noor Ahmed, s/o. Khaja Mia, working as Duftry,

State Bank of India, Marketyard Branch,
Kurnool.

..... PETITIONER

AND

1 State Bank of India, rep. by its General Manager, Bank Street, Hyderabad- 500195.Hyderabad Circle,
2 Regional Manager, Region- II, State Bank of India, Bank Street, Hyderabad- 500195.
3 Branch Manager, State Bank of India, Marketyard Branch, Kurnool.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction, especially one in the nature of Mandamus; (i) to declare that the petitioner is entitled to count his service without any break; (ii) to declare that the petitioner is entitled to be paid the back wages treating the period commencing from 22-12-1982, the date on which he was suspended from service to the date of his reinstatement i.e. , 25-3-1992 as duty period; (iii) to direct the respondents to grant the difference of emoluments

commencing from 22-12-1982 by fixing his pay at an appropriate stage by treating his service as continuous and pay interest at the rate of 18% per annum; and to grant consequential benefits such as seniority, promotion etc; and (iV) to grant such other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.V.JOGAIAH SARMA

Counsel for the Respondents: MR.B.G.RAVINDER REDDY

The Court made the following :

ORDER:

The petitioner entered the service of the State Bank of India as a Messenger in 1972. He was transferred on promotion as Duftry to a Branch at Kurnool in 1982. While serving there, he was suspended on 22.12.1982 on allegation that he had suppressed the factum of his conviction prior to his entering the service of the bank. He was subjected to a disciplinary enquiry and was discharged from service by an order, dated 25.03.1986. He assailed the order discharging him from service by way of W.P.No.13251 of 1986. The writ petition was allowed by the judgment of this Court, dated 03.12.1991 quashing the order of the petitioner's discharge. He was reinstated to duty by proceedings, dated 17.03.1992, and on reinstatement he made a representation, dated 10.09.1992, for fixation of his salary and allowance at the appropriate stage giving due benefit for continuous service and for payment of arrears of salary for the period he was out of service on account of the illegal order of discharge and for the benefits of promotion during the interregnum. By the impugned order, dated 28.06.1993, the third respondent rejected the petitioner's requests for the consequent financial and career benefits pursuant to the judgment of this Court, dated 03.12.1991, in W.P.No.13251 of 1986. Aggrieved by this rejection, the petitioner is before this Court.

Sri B.G.Ravindra Reddy, learned Standing counsel for the

respondent-bank urges a singular defence to the claims of the petitioner. It is contended that as the petitioner sought a plurality of reliefs including the benefit of the financial components consequent on invalidation of the discharge order, in W.P.No.13251 of 1986 and inasmuch as this Court had merely quashed the order of discharge without granting the other reliefs sought by the petitioner, and had not specifically granted the petitioner all the consequential benefits that he had sought, the petitioner is not entitled to claim any such benefits. Learned counsel would also urge that the order of discharge became invalid only prospective from the declaration of this Court as to its invalidity, by the judgment, dated 03.12.1991. This contention urged on behalf of the respondent-bank is extravagant and misconceived. It is too well settled that a judgment of a Court of competent jurisdiction is always retrospective and relates back to the date of the events on which the adjudication is made, i.e., with effect from the date of the order of discharge.

In the contextual facts it is axiomatic that the order of discharge was *non-est* and still-born. Consequently, the petitioner must be deemed never to have been discharged from service. Being kept out of active service pursuant to such an illegal discharge order would constitute an illegal act of the respondent-bank for which the petitioner cannot be made to suffer by way of deprivation of salary, emoluments or the promotion avenues.

On the above analysis, the writ petition requires to be allowed and it is accordingly allowed. The respondent-bank is directed to expeditiously and in any case within three months from the date of receipt of a copy of this order, compute and pay the petitioner all the benefits including salary and emoluments, allowances and other benefits to which he is due and eligible for the period he was out of service pursuant to the discharge order, dated 25.03.1986, till the date of his reinstatement pursuant to the proceedings, dated 17.03.1992. The arrears of such computed salary and emoluments shall be paid to the petitioner within the aforesaid time. If the petitioner would have been due and eligible for any promotional post (s) for or

during the period he was out of service, the petitioner's case should also to be considered for such promotional opportunities not withstanding that on account of his *de facto* absence some other persons had been considered and promoted during such period. This exercise shall be initiated and concluded, if warranted, in the facts and circumstances, within a period of four months from the date of receipt of a copy of this order.

The writ petition is allowed, but in the circumstances without costs.

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(GODA RAGHURAM, J)

09.08.2004

dr

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on the Monday, the Ninth day of August, Two thousand and four.

To

1 The General Manager, State Bank of India, Bank Street, Hyderabad- 500195.Hyderabad Circle,
2 Regional Manager, Region- II, State Bank of India, Bank Street, Hyderabad- 500195.

3 Branch Manager, State Bank of India, Marketyard Branch, Kurnool.

4 Two CD copies.